

FINAL BILL REPORT

EHB 1385

C 324 L 09

Synopsis as Enacted

Brief Description: Modifying provisions relating to sexual misconduct by school employees.

Sponsors: Representatives Haler, Van De Wege, Kessler, Pearson, Takko, Klippert, Blake, Morrell, Dammeier, Warnick, Smith and Johnson.

House Committee on Public Safety & Emergency Preparedness
Senate Committee on Judiciary

Background:

A person is guilty of the class C felony of sexual misconduct with a minor in the first degree if the person is a school employee and has sexual intercourse with a registered student of the school who is at least 16 years old, if the employee is at least 60 months older than the student.

A person is guilty of the class B felony of sexual misconduct with a minor in the second degree if one of several specified acts occur, including if the person is a school employee and has sexual contact with a registered student of the school who is at least 16 years old, if the employee is at least 60 months older than the student.

In January 2009, Division II of the Washington Court of Appeals interpreted the sexual misconduct with a minor statute. In the case of *State v. Hirschfelder*, a high school choir teacher was alleged to have had sexual intercourse with an 18-year-old member of the high school choir shortly before the student graduated from high school, and, as a result, was charged with one count of first degree sexual misconduct with a minor. The question considered by the Court of Appeals was whether the statute prohibits sexual intercourse with minor students aged 16 and 17 only, or with *all* students aged 16 and older.

The Court of Appeals held the statute is ambiguous, but that legislative history indicates the Legislature intended to criminalize only sexual contact between school employees and students aged 16 and 17.

Summary:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The term "enrolled student" is defined to mean: (1) any student enrolled at or attending a program hosted or sponsored by a common school; (2) a student enrolled at or attending a program hosted or sponsored by a private school; or (3) any person who receives home-based instruction.

The crime of sexual misconduct with a minor in the first degree is modified to criminalize sexual intercourse between a school employee and an enrolled student of the school who is at least 16 years old and not more than 21 years old.

The crime of sexual misconduct with a minor in the second degree is modified to criminalize sexual contact between a school employee and an enrolled student of the school who is at least 16 years old and not more than 21 years old.

Votes on Final Passage:

House	81	14	
Senate	44	0	(Senate amended)
House	82	16	(House concurred)

Effective: July 26, 2009